



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
) ISCR Case No. 19-03881
)
Applicant for Security Clearance)

Appearances

For Government: Allison Marie, Esq., Department Counsel

For Applicant: *Pro se*

04/09/2021

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant has not mitigated the security concerns under the financial considerations guideline. He did not present documentation to support his burden of proof. Eligibility for access to classified information is denied.

Statement of the Case

On February 18, 2020, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Adjudicative Guideline F (financial considerations). The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by DOD on June 8, 2017. Applicant responded to the SOR and elected to have his case decided on the written record in lieu of a hearing.

Department Counsel submitted the Government’s file of relevant material (FORM) on November 13, 2020. Applicant received the FORM on November 23, 2020. Applicant did not object to the Government’s evidence, but provided additional

documentation in response to the FORM, which was admitted into the record as AX A. The Government's evidence, included in the FORM and identified as Items 1 through 9, is admitted without objection. The case was assigned to me on April 1, 2021. Based on my review of the documentary evidence, I find that Applicant has not mitigated financial considerations security concerns.

Findings of Fact

In response to the SOR, Applicant admitted allegations with explanations. (Item 3) He denied SOR 1.l and 1.m because he has not been able to contact the collection company. He is 30 years old and divorced in 2013. He has one son. (Item 4) He graduated from high school in 2008. Applicant served in the U.S. Air Force from August 2008 until August 2012, when he was honorably discharged. He completed a security clearance application on September 1, 2017. He has worked for his current employer since August 2017. He reports several periods of unemployment. (Item 3) Applicant does not currently hold a security clearance. (Item 3)

Financial

The SOR alleges 13 delinquent debts, including consumer, automobile, utility, and medical debts that have been placed for collection or charged off for a total of \$31,349. (Item 1) His admissions total \$30,932. (Item 3). The delinquent accounts are as follows: ¶1.a (\$1,000); ¶1.b (\$1,134); ¶ 1.c (\$802); ¶1.d (\$10,227); ¶1.e (\$7,491); ¶ 1.f (\$2,925) ¶1.g (\$2,056) ¶1. h (\$4,057;) ¶1.i (\$208); ¶1.j (\$193); ¶ 1.k (\$839); ¶1.l (\$226); ¶1.m (\$191).

Applicant attributes the delinquent debts to accounts that he incurred when he was in the military. After serving, he took lower paying jobs and his bills could not be paid. He also acknowledged that his youth and lack of credit seriousness played a significant role in his conduct. His plan is to have all debts paid within the next five years. (Response to FORM) Applicant also stated that he moved around frequently and was not aware of some of the bills. He also added that his divorce and lowering of income contributed to the accumulation of debt. (Item 5) In his 2017 subject interview, he stated that he did not know what he was doing with his money.

In Applicant's Answer to the SOR, he asserted that he had contacted creditors and arranged payment plans for four of the alleged debts –SOR ¶1.a-d and 1.e. He contends that he has an arranged payment plan of \$10 a week for the medical debt at ¶1.a. Applicant further asserted that he is working on his options or establishing payment plans with respect to the remaining admitted debts. He did not provide any agreement plans.

As to SOR 1.c, he submitted cancelled checks from March 13, 2020 to July 30, 2020 for a total of \$160. (AX A) As to SOR 1.d and 1.e, Applicant submitted cancelled checks in the amount of \$40 in the amount of \$340 from March 2020 to July 2020. (AX A)

Applicant provided no additional documentation that he has contacted the remaining creditors. Although he has stated that he has and will pay off more debts and continue with a plan until all incurred debt is charged off. He believes this action demonstrates positive changes in behavior and his willingness to resolve the security concern.

Applicant has worked for the U.S. Government for eight years and takes his job seriously. He also stated that he is considering bankruptcy with credit counselors or lawyers. He reviewed his credit reports and notes that there are only three accounts left on the reports that are delinquent. The others are charged-off.

Applicant stated he has learned from his mistakes and is working on his credit report to "clean up my mess." He has had no issues in the military. He stated that he has changed his lifestyle by no longer using credit cards and trying to save more money. He received some financial counseling and debt consolidation more than seven years ago. (Item 4) At the interview, Applicant was given an opportunity to submit documentation regarding the financial delinquencies. He failed to provide any documentation or dispute information. (Item 4)

Applicant is gainfully employed. There is no information in the record concerning his salary, use of a financial counselor (except the reference to meeting with a lawyer), or budget. There is no little evidence in the record that his payments are being made pursuant to an agreement.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Exec. Or. 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F (Financial Considerations)

The concern under this guideline is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions, corroborated by his credit reports, establish two disqualifying conditions under this guideline: AG ¶¶ 19(a) (“inability to satisfy debts”);

and 19(c) (“a history of not meeting financial obligations”).

The security concerns raised in the SOR may be mitigated by the following potentially applicable factors:

AG ¶ 20(a): the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

AG ¶ 20(b): the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(c): the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant admitted, and his credit reports confirm, that he is responsible for the delinquent debts. He blames the debts on his divorce in 2012 and some underemployment and unemployment. He has provided some documentation that supports he is making payments on two accounts. He plans to pay his debts in the next five years.

Based on the scant evidence produced by Applicant, it is impossible to conclude he made a sufficient good-faith effort to resolve his debts or that his financial situation is under control. Consequently, the Government has cause to question whether Applicant has his finances under control. Despite gainful employment, there is no evidence that Applicant has made any payments on any of the remaining delinquent debts. Any doubts must be resolved in favor of the Government.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable

participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis.

Applicant has started to pay on two accounts. He provided some documentation, He served honorably in the U.S. Air Force. He was divorced in 2012. He loves his job. He had some unemployment and underemployment. He did not provide sufficient evidence to mitigate the security concerns.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility for a security clearance. Because protection of the interests of national security is the principal focus of these adjudications, any remaining doubts must be resolved by denying eligibility for access to sensitive information.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a –1.b:	Against Applicant
Subparagraphs 1.c-1.e:	For Applicant
Subparagraphs 1.f-1.l	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Continued eligibility for access to classified information is denied.

Noreen A. Lynch
Administrative Judge